IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2568 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006

Shri Sadashiv Sitaram Nevarekar ...Applicant.

Versus

Pandurang Sitaram Nevarekar
and Anr. ...Respondents.

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Mr.Dilip Bodake, Adv. for Applicant.
Mr.S.R.Shinde, APP, for State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 22nd February, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant-orig.complainant and the learned APP for the State.

2. Being aggrieved by the judgment and order of acquittal of respondent No.1-orig.accused dated 6.5.2006 passed by the learned JMFC, Kankawali (Court No.1) in R.C.C. No.121 of 2001, this Appeal has been preferred. By the said judgment and order the learned Magistrate acquitted the

accused under Sections 323 & 506(2) of IPC.

3. The prosecution case, briefly stated, is as under :-

. The applicant and respondent No.1-orig.accused are brothers. The relations between them were strained on account of property dispute. It is the case of the applicant-Sadashiv Sitaram Nevarekar that on 26.8.2001 when he went to meet his uncle Vishnu Nevarekar at that time the accused came there and gave slaps on head, stomach, chest and back. He also threatened to kill the complainant. In support of the case, the complainant has examined himself, his son Dipak and the Doctor. Though the complainant has mentioned about the accused giving slaps to him and that he thereafter threatened him, his son Dipak does not state anywhere about any abuse or threat being given to the complainant. Moreover the complainant does not state anywhere that when he went to the house of his uncle Vishnu Nevarekar, his son Dipak was accompanied him. As far as injuries caused to the complainant are

concerned, the Doctor has stated that there were six injuries on the body of the complainant. However, all the injuries were simple in nature. Moreover the Doctor has clearly stated that such injuries can be caused if a person falls on the ground.

4. In the present case, it is seen that there were strained relations between the applicant and respondent No.1, who was his brother, on account of property dispute. The complainant had gone to the house Vishnu Nevarekar, who is his uncle as well as that of the accused. As Vishnu Nevarekar was present at the time of the incident, he could have been an independent eye witness for the complainant to establish his claim. However, Vishnu has not been examined.

5. Looking to the fact that there were strained relations between the parties, it would have lended more authenticity to the case of the complainant, if Vishnu has been examined. This view has been taken by the learned Magistrate. So also the learned Magistrate has observed that

there are material discrepancies between the evidence of the complainant and his son Dipak. On going through the evidence, it is seen that indeed there are material discrepancies between the evidence of complainant and his son. This creates doubt in the mind about the truthfulness of the case of the complainant. In such case, the learned Magistrate has given benefit of doubt to the accused.

6. In this view of the matter, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

7. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1**.

8. In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view hence, no interference is called for. Application is rejected.

(SMT.V.K.TAHILRAMANI,J.)